TAN BOON BAK TRADING SDN BHD

v.

CHUA CHOONG YIN

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: W-02-637-1998]
21 MAY 2003

COSTS: *Bill of costs - Getting-up fee - Judge reviewing registrar's certificate under O. 59 r. 36 Rules of the High Court 1980 - Fourteen-day time-limit to apply for review under O. 59 r. 36(2) - Whether only begins to run after registrar has signed certificate - Whether applicant out of time - Whether application for review of registrar's certificate involved substantive issues of principle - Whether actually an appeal against quantum - Whether High Court or Court of Appeal should be slow to interfere with registrar's award for getting-up*

WORDS & PHRASES: *"certificate" - Rules of the High Court 1980, O. 59 r. 1(1) - Whether includes an 'allocatur' - Whether certificate can also come in the form of a 'reasoned judgment' in support of the registrar's decision*

On 18 August 1992, the appellant/defendant had its item for getting-up in its bill of costs taxed by the registrar in the sum of RM4,500. The respondent/plaintiff was unhappy with this figure and sought to have the registrar review his decision under O. 59 r. 34 Rules of the High Court 1980 ('RHC'). On 19 January 1993, the registrar heard the review and reduced the getting-up item to RM4,000. Dissatisfied, the defendant requested the registrar's reasons for his decision on the review – with a view to taking the matter further before the judge-in-chambers for a second review under O. 59 r. 36 RHC. The registrar provided the reasons for his decision on 8 December 1995 and the defendant filed its review before the judge-in-chambers on 22 December 1995. At the hearing of the summons-in-chambers, counsel for the plaintiff took a preliminary objection on the ground that the defendant was out of time. The learned judge upheld the objection and the defendant sought and obtained leave to appeal from the Court of Appeal. Before the lord justices of appeal, the question of law that was central to the disposal of the instant appeal was: when does time begin to run in an application for review before a judge pursuant to O. 59 r. 36(2) RHC?

Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

[1] A review by a judge under O. 59 r. 36(2) RHC is predicated upon the issuance of the registrar's certificate under O. 59 r. 35(3) RHC. In other words, the 14-day time-limit prescribed by O. 59 r. 36(2) RHC begins to run only **after** the registrar has given his certificate. The certificate can come in the form of an 'allocatur' or even a 'reasoned judgment in support of the registrar's decision'. It followed, therefore, that the learned judge was wrong in upholding the plaintiff's preliminary objection that the defendant was out of time. (p 699 d-e)

[2] **Nevertheless,** the defendant's application for review did not involve any substantive question of principle. Indeed, it was an appeal against quantum; namely, that the getting-up fee was inadequate. It is trite that a court of review, be it the High Court or the Court of Appeal, will be slow to interfere with the quantum awarded for getting-up in a bill of costs. Further, no substantial miscarriage of justice had taken place in the present case. (p 699 f-h)

*[**Bahasa Malaysia** Translation Of Headnotes*

Pada 18 Ogos 1992, butir-butir penyediaan kes dalam bil kos perayu/defendan telah ditaksir oleh pendaftar pada kadar RM4,500. Responden/plaintif tidak berpuas hati dengan jumlah taksiran dan telah memohon supaya pendaftar mengkaji semula akan taksirannya itu di bawah A. 59 k. 34 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Pada 19 Januari 1993, pendaftar membuat kajian semula dan mengurangkan jumlah butiran penyedian kes ke RM4,000. Merasa tidak puas hati, defendan meminta alasan-alasan bagi keputusan pendaftar pada kajian semula tersebut – bertujuan melanjutkan halperkara ke hakim-dalam-kamar untuk kajian semula yang kedua di bawah A. 59 k. 36 KMT. Pendaftar memberikan sebab-sebab bagi keputusannya pada 8 Disember 1995 dan defendan memfailkan kajian semula kepada hakim-dalam-kamar pada 22 Disember 1995. Di pendengaran saman-dalam-kamar, peguam plaintif membangkitkan bantahan awal bahawa defendan telah di luar masa. Yang arif hakim membenarkan bantahan dan berikutnya defendan memohon dan memperoleh kebenaran dari Mahkamah Rayuan untuk merayu. Di hadapan hakim-hakim rayuan, persoalan undang-undang yang menjadi tunggak kepada pemutusan rayuan di sini adalah: bilakan masa mula berjalan dalam suatu permohonan kajian semula di hadapan hakim di bawah A. 59 k. 36(2) KMT?

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

[1] Kajian semula oleh seseorang hakim di bawah A. 59 k. 36(2) KMT adalah diasaskan kepada pengeluaran sijil pendaftar di bawah A. 59 k. 35(3). Dalam lain perkataan, had masa 14 hari yang ditetapkan oleh A. 59 k. 36(2) mula berjalan selepas pendaftar memberikan sijilnya. Sijil boleh dikeluarkan dalam bentuk 'allocatur' mahupun dalam bentuk 'penghakiman yang mengandungi alasan-alasan yang menyokong keputusan pendaftar'. Ianya, dengan itu, mengikut bahawa yang arif hakim silap apabila membenarkan bantahan awal plaintif bahawa defendan sudah pun di luar masa.

[2] Walau apapun, permohonan kajian semula defendan tidak melibatkan apa-apa persoalan prinsip yang substantif. Malah, ia adalah rayuan terhadap kuantum, iaitu, bahawa fee penyediaan kes adalah tidak mencukupi. Sudah menjadi kebiasaan bahawa sebuah mahkamah kajian semula, sama ada ianya Mahkamah Tinggi ataupun Mahkamah Rayuan, akan bersikap berhati-hati sebelum mengganggu jumlah yang diawardkan untuk penyediaan kes dalam sesuatu bil kos. Selain itu, tidak berlaku apa-apa salah laksana keadilan dalam kes semasa.

Case(s) referred to:
Ho Wai Seng & Anor v. Johari Abas & Anor [1998] 3 CLJ Supp 277 HC ***(refd)***
Sumitomo Bank Ltd v. Kartika Ratna Thahir [1997] 1 SLR 690 ***(not foll)***

Legislation referred to:
Rules of the High Court 1980, O. 59 rr. 1(1), 35(3), 36(2)

For the appellant - Su Tiang Joo (Malcolm Murphy); M/s Cheah Teh & Su
For the respondent - Tony Dhana; M/s Tony Dhana & Co

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R8-25-129-90]

Reported by Gan Peng Chiang

JUDGMENT
(Oral)

Gopal Sri Ram JCA:
This is the judgment of the court.

This appeal concerns the construction to be placed on O. 59 r. 36(2) of the Rules of the High Court 1980. In sharp focus is the question as to when time begins to run in relation to an application for review before a judge pursuant to O. 59 r. 36(2).

The facts relevant to this appeal are as follows. The appellant, as long ago as 18 August 1992 had its item for getting-up in its bill of costs taxed by the registrar in the sum of RM4,500. The respondent was unhappy with this figure. He wanted it decreased. He wanted the registrar to review his decision. It was only by way of reply to the respondent's application for review before the registrar that the appellant sought an increase for the item for getting up. The registrar heard the review on 19 January 1993 and reduced the appellant's getting-up item to RM4,000. Being dissatisfied, the appellant wanted to take the matter further before the judge in chambers for a second review. So it wrote to the registrar calling for the reasons for his decision on the review pursuant to O. 59 r. 35(3). Those reasons did not come until 8 December 1995. Then on 22 December 1995, the appellant filed its review before the judge. At the hearing of the summons-in-chambers, counsel for respondent took a preliminary objection on the ground that the appellant was out of time. The learned judge upheld the objection. The appellant now, having obtained our leave, appeals to this court.

To appreciate the arguments addressed to us this morning, it is necessary to refer to the relevant provisions. These are O. 59 r. 35(3) and r. 36(2). These read as follows:

Order 59 rule 35(3):

> The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to the decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.
>
> A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar."

Order 59 rule 36(2):

> An application under this rule for review of the Registrar's decision in respect of any item may be made at any time within 14 days, or such longer time as the Registrar at the time when he signs the certificate or the Court at any time, may allow.

For completeness, it is necessary to mention O. 59 r. 1(1) which defines the term "certificate" as including an allocatur.

Learned counsel for the appellant has argued that when one reads O. 59 r. 36(2) together with O. 59 r. 35(3), the result is that time should only start to run from the date on which the registrar issues his certificate. In support of that argument, we were referred to the decision of our learned brother, Hashim Yusoff J (as he then was) in the case of *Ho Wai Seng & Anor v. Johari Abas & Anor* [1998] 3 CLJ Supp 277. In that case it was held, inter alia, that a review before a judge was predicated upon the issuance by the registrar of his or her certificate.

Learned counsel for respondent on the other hand, relied on the decision of the Singapore High Court in *Sumitomo Bank Ltd v. Kartika Ratna Thahir* [1997] 1 SLR 690, where Lai Kew Chai J held, on an interpretation of the identically worded Singapore equivalent, that time should begin to run from the date of the registrar's decision on the review before him.

While we readily acknowledge that respect is to be accorded to so learned a judge as Lai Kew Chai J, we are on this occasion unable to agree with him. In our judgment, it would be impossible upon a sensible interpretation of the two rules of court which we have reproduced earlier, to hold that time should run even before the registrar's certificate has been issued. Adopting, a purposive construction, it is our view that time ought only to begin to run after the registrar has given his certificate. And that certificate can come in any form. It may come in the form of an allocatur. Or it may come in the form of a reasoned judgment in support of his decision. The open ended definition of the expression "certificate" in the first rule of O. 59 admits of such a conclusion. It follows that the learned judge in the court below was wrong in upholding the respondent's preliminary objection and in dismissing the summons-in-chambers for review *in limine.*

But that is not the end of the matter. The essence of the appellant's complaint is that the sum awarded to it as getting-up by the registrar is inadequate. Learned counsel for the appellant attempted to dress his argument by submitting that there was really an error of principle in this case. We are unable to agree with this. As observed by my learned brother, Abdul Kadir bin Sulaiman JCA, during argument this morning, this is really an appeal against the quantum. And as pointed out by my learned brother, a court of review, whether it be the High Court or this court, is generally slow in interfering with the quantum awarded for getting-up in a bill of costs. Accordingly, we are satisfied even if the preliminary objection had failed, the review before the judge would in any event have been unsuccessful. It follows that this is a case where there has been no substantial miscarriage of justice.

For the reasons already given, this appeal fails. It is dismissed.